

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 **WARSAW ORTHOPEDIC, INC.,**
12 **et al.,**

13 **Plaintiffs,**

14 **vs.**

15 **NUVASIVE, INC., et al.,**

16 **Defendants.**

CASE NO. 12cv2738-CAB (MDD)

**CASE MANAGEMENT ORDER
REGULATING DISCOVERY
AND OTHER PRETRIAL
PROCEEDINGS IN A PATENT
CASE**

17 1. On or before **April 15, 2013**, each party claiming patent
18 infringement shall separately serve on all parties a Disclosure of
19 Asserted Claims and Preliminary Infringement pursuant to Patent L.R.
20 3.1 and produce documents as required by Patent L.R. 3.2.

21 2. On or before **June 6, 2013**, each party opposing a claim of
22 infringement shall serve Invalidity Contentions pursuant to Patent L.R.
23 3.3 and produce documents as required by Patent L.R. 3.4.

24 3. On or before **June 20, 2013**, the parties shall exchange
25 Preliminary Claim Constructions pursuant to Patent L.R. 4.1(a) and
26 identify extrinsic evidence as required by Patent L.R. 4.1(b).

27 4. On or before **July 5, 2013**, the parties shall exchange
28 Responsive Claim Constructions pursuant to Patent L.R. 4.1(c) and

1 identify extrinsic evidence as required by Patent L.R. 4.1(d).

2 5. On or before **July 19, 2013**, parties shall complete and file a
3 Joint Claim Construction Chart, Joint Claim Construction Worksheet,
4 and Joint Hearing Statement pursuant to Patent L.R. 4.2.

5 6. The deadline for filing, as of right, Amended Infringement
6 Contentions by a party claiming infringement is **July 19, 2013**. *See*
7 Patent L.R. 3.6(a).

8 7. All discovery intended for use in the Claim Construction
9 Hearing must be completed by **August 16, 2013**. *See* Patent L.R. 4.3.

10 8. The deadline for filing, as of right, Amended Infringement
11 Contentions by the party opposing infringement is **July 19, 2013**. *See*
12 Patent L.R. 3.6(b)

13 9. On or before **August 30, 2013**, the parties must file
14 simultaneously their Opening Claim Construction Briefs. *See* Patent
15 L.R. 4.4(a).

16 10. On or before **September 13, 2013**, the parties must file
17 simultaneously their Responsive Claim Construction Briefs. *See* Patent
18 L.R. 4.4(b).

19 11. The Claim Construction and tutorial hearing will be held
20 **October 17, 2013, at 9:30 a.m.** *See* Patent L.R. 4.5.

21 12. Not later than thirty (30) days after the filing of the Claim
22 Construction Order, any party relying upon advice of counsel as part of a
23 patent-related claim or defense for any reason must make the
24 disclosures required by Patent L.R. 3.7

25 13. A party asserting infringement must serve final amended
26 infringement contentions, within the meaning of Patent L.R. 3.6(a)(1),
27 not later than thirty (30) days after service of the Court's Claim
28 Construction Ruling.

1 14. A party opposing a claim of infringement must serve final
2 amended invalidity contentions, within the meaning of Patent L.R.
3 3.6(b)(2), not later than fifty (50) days after service of the Court's Claim
4 Construction ruling.

5 15. The initial date for the substantial completion of document
6 discovery including electronically stored information ("ESI") is **October**
7 **15, 2013**. See Patent L.R. 2.1(a)(1).

8 16. All fact discovery shall be completed by all parties on or
9 before **November 15, 2013**.

10 17. All expert disclosures required by Fed. R. Civ. P. 26(a)(2)
11 shall be served on all parties on or before **December 16, 2013**. Any
12 contradictory or rebuttal disclosures within the meaning of Rule
13 26(a)(2)(D)(ii) shall be disclosed on or before **January 16, 2014**. Unless
14 otherwise stipulated by the parties, the required expert disclosures shall
15 include an expert report as required by Rule 26(a)(2)(B). If a written
16 report is not required, the disclosure must provide the information
17 required under Rule 26(a)(2)(c).

18 18. All discovery, including expert discovery, shall be completed
19 by all parties on or before **February 24, 2014**. "Completed" means that
20 interrogatories, requests for production, and other discovery requests
21 must be served at least thirty (30) days prior to the established cutoff
22 date so that response thereto will be due on or before the cutoff date. All
23 subpoenas issued for discovery must be returnable on or before the
24 discovery cutoff date. All disputes concerning discovery shall be brought
25 the attention of the Magistrate Judge no later than forty-five (45) days
26 following the date upon which the event giving rise to the dispute
27 occurred. Counsel are required to meet and confer regarding all
28 discovery disputes pursuant to the requirements of Local Rule 26.1(a).

1 Counsel are to comply with the chambers rules of the Magistrate Judge
2 in bringing discovery before the court.

3 19. All other dispositive motions, including those addressing
4 Daubert issues, shall be **FILED** on or before **March 17, 2014**. Please be
5 advised that counsel for the moving party must obtain a motion hearing
6 date from the law clerk of the judge who will hear the motion. **Failure**
7 **of counsel to timely request a motion date may result in the**
8 **motion not being heard.** Motions in Limine are to be filed as directed
9 in the Local Rules, or as otherwise set by Judge Bencivengo.

10 20. Briefs or memoranda in support of or in opposition to any
11 pending motion shall not exceed twenty-five (25) pages in length without
12 permission of the judge or magistrate judge who will hear the motion.
13 No reply memorandum shall exceed ten (10) pages without leave of the
14 judge or magistrate judge who will hear the motion.

15 21. A Mandatory Settlement Conference shall be conducted on
16 **February 26, 2014, at 9:30 a.m.**, in the chambers of Magistrate Judge
17 Dembin. Counsel shall submit **confidential** settlement statements
18 **directly to chambers** no later than **February 19, 2014**. Each party's
19 settlement statement shall set forth the party's statement of the case,
20 identify controlling legal issues, concisely set out issues of liability and
21 damages, and shall set forth the party's settlement position, including
22 the last offer or demand made by that party, and a separate statement of
23 the offer or demand the party is prepared to make at the settlement
24 conference. **Settlement conference briefs shall not be filed with**
25 **the Clerk of the Court, nor shall they be served on opposing**
26 **counsel.**

27 22. Pursuant to Local Civil Rule 16.3, all party representatives
28 and claims adjusters for insured defendants with full and unlimited

1 authority to negotiate and enter into a binding settlement, as well as the
2 principal attorney(s) responsible for the litigation, must be present and
3 legally and factually prepared to discuss and resolve the case at the
4 mandatory settlement conference. Retained outside corporate counsel
5 shall not appear on behalf of a corporation as the party who has the
6 authority to negotiate and enter into a settlement. Failure to attend the
7 conference or obtain proper excuse will be considered grounds for
8 sanctions.

9 23. In order to identify the claims to be tried and eliminate delay
10 and surprise at trial, the Court enters the following pretrial order
11 pursuant to Fed. R. Civ. P. 16.

12 24. Parties are excused from the requirement of Local Rule
13 16.1(f)(2)(a); no Memoranda of Law or Contentions of Fact are to be filed.

14 25. All parties or their counsel shall fully comply with the
15 Pretrial Disclosure requirements of Fed. R. Civ. P. 26(a)(3) on or before
16 **May 23, 2014. Failure to comply with these disclosures**
17 **requirements could result in evidence preclusion or other**
18 **sanctions under Fed. R. Civ. P. 37.**

19 26. Pursuant to Local Civil Rule 16.1(f)(4), on or **before May 30,**
20 **2014**, the parties shall meet and confer to comply with the provisions of
21 that section and prepare a proposed pretrial order in accordance with
22 Local Rule 16.1(f)(6)(c), and containing the following:

23 a. A joint neutral statement to be read to the jury, not in
24 excess of one page, of the nature of the case and the claims and defenses.

25 b. A list of the causes of action to be tried, referenced to
26 the Complaint [and Counterclaim if applicable]. For each cause of
27 action, the order shall succinctly list the elements of the claim, damages
28 and any defenses. A cause of action in the Complaint [and/or

1 Counterclaim] which is not listed shall be dismissed with prejudice.

2 c. A list, in alphabetical order, of:

3 (i) Each witness counsel actually expect to call at trial with
4 a brief statement, not exceeding four sentences, of the
5 substance of the witnesses' testimony.

6 (ii) Each expert witness counsel actually expect to call at
7 trial with a brief statement, not exceeding four sentences, of
8 the substance of the expert witnesses' testimony.

9 (iii) Additional witnesses, including experts, counsel do not
10 expect to call at this time but reserve the right to call at trial
11 along with a brief statement, not exceeding four sentences, of
12 the substance of the witnesses' testimony.

13 d. A list of:

14 (i) All exhibits that counsel actually expect to offer at trial
15 with a one-sentence description of the exhibit. All exhibits
16 are to be identified numerically, plaintiff starting with "1"
17 and defendant beginning with an agreed upon numerical
18 designation.

19 (ii) All other exhibits that counsel do not expect to offer at
20 this time but reserve the right to offer if necessary at trial
21 with a one-sentence description of the exhibit.

22 e. A statement of all facts to which the parties stipulate.

23 This statement shall be on a separate page and will be read to and
24 provided to the jury.

25 f. A list of all deposition transcripts by page and line, or
26 videotape depositions by section, that will be offered at trial.

27 g. Counsel will note any objections they have to any other
28 parties' Fed. R. Civ. P. 26 (a)(3) Pretrial Disclosures.

1 The Court encourages the parties to consult with the assigned
2 magistrate judge to work out any problems in preparation of the
3 proposed pretrial order. Judge Bencivengo will entertain any questions
4 concerning the conduct of the trial at the pretrial conference.

5 27. Counsel for plaintiff will be responsible for preparing the
6 pretrial order and arranging the meetings of counsel pursuant to Civil
7 Local Rule 16.1(f)(6)(a). On or before **June 6, 2014**, plaintiff's counsel
8 must provide opposing counsel with the proposed pretrial order for
9 review and approval. Opposing counsel must communicate promptly
10 with plaintiff's attorney concerning any objections to form or content of
11 the pretrial order, and both parties should attempt promptly to resolve
12 their differences, if any, concerning the order.

13 28. The proposed final pretrial conference order, including
14 objections counsel have to any other party's Fed. R. Civ. P. 26(a)(3)
15 Pretrial Disclosures shall be prepared, served and lodged with Judge
16 Bencivengo's chambers on or before **June 13, 2014**, and shall be in the
17 form prescribed in and in compliance with Local Rule 16.1(f)(6)(c).
18 Counsel shall also bring a court copy of the pretrial order to the pretrial
19 conference.

20 29. The final pretrial conference shall be held before the
21 Honorable Cathy Ann Bencivengo, United States District Court Judge,
22 on **June 20, 2014, at 2:30 p.m.**, during which time the Court will
23 address the submission of *motions in limine*, trial briefs, proposed *voir*
24 *dire* and jury instructions and the trial schedule.

25 30. The dates and times set forth herein will not be modified
26 except for good cause shown.

27 //

28 //

1 31. Plaintiff's counsel shall serve a copy of this order on all
2 parties that enter this case hereafter.

3 IT IS SO ORDERED.

4
5 DATED: April 8, 2013

6
7 
8 Hon. Mitchell D. Dembin
9 U.S. Magistrate Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28